



COMMENTS OF COMMON CAUSE/PENNSYLVANIA ON PROPOSED LOBBYIST DISCLOSURE REGULATIONS

**Presented to the Lobbying Disclosure Regulations Committee
August 2, 2007 – The State Capitol**

Good morning chairman Mulle and distinguished committee members. I am Barry Kauffman, the Executive Director of Common Cause/Pennsylvania. Enactment of a lobbyist disclosure and regulation statute has been one of Common Cause/PA's primary goals since the founding of our organization in 1974. With the implementation of these regulations Pennsylvania will take another significant step toward providing the citizens of our state with the kind of information and protection they need in the quest for open, accountable and responsive government.

I had the opportunity to attend several of your deliberations on the drafting of the regulations, and was impressed by the diligent and thoughtful approach taken by the committee members. I also was impressed by the comprehensive and in-depth preparation and support provided by the Department's staff.

On the whole we believe that the committee has done a good job creating the regulations necessary for implementing Act 134. Common Cause/PA still has serious concerns about flaws and weaknesses in the regulation of lobbying in this commonwealth, but most of those concerns must be addressed by legislation. We do have a few observations about the regulatory process as it has evolved to date.

We want to commend the Department for creating registration and reporting forms that are easy to understand and complete. One of the primary goals of lobbyist disclosure is to create an informative body of data that helps the public to get an accurate picture of the forces that are affecting laws that govern every aspect of their lives. To accomplish this goal we must demand comprehensive reporting by lobbyists and we must establish a system that makes it relatively easy for lobbyists to comply. While the design of the reporting instruments is good, the delivery system is unreliable. Common Cause/PA experienced major problems in the electronic transmission of both its registration and financial disclosure reports. We understand that quite a few other lobbyists experienced similar problems. Therefore, we recommend that the Department's electronic filing system automatically send the filer an immediate confirmation of receiving the submission. These problems must be remedied if lobbyists and the public are to achieve confidence in the system.

Our initial reading of the regulations suggests that the committee has good job of creating regulations that will help lobbyists to comply with the law and help the responsible government agencies to enforce it. We offer the following observations in the spirit of helping you further improve your work product.

Definitions

To begin, we commend you for retaining all of the statute's definitions in the regulations. This helps create one-stop-shopping for information – thus making compliance efforts by lobbyists easier. However, in places that the regulations refer to specific language in other statutes, you should add that language to the regulations so that lobbyists attempting to comply with the law do not have to research a wide range of other statutes to ensure compliance (e.g. the definitions of “association”, “bidder”, “candidate” “contractor” “offeror”, “political action committee”, “political subdivision”, “statement of policy”). The following are our observations and suggestions regarding specific definitions.

“Agency” It is crucial that the definition makes it absolutely clear that this definition applies to *ALL* state level Boards, Commissions Authorities and Independent Agencies; not just those under the Governor's jurisdiction.

“Amendment” You may want to insert the word “any” before the word “one” in the first line.

“Anything of value” As indicated by the track changes in the draft, earlier versions of this definition included at least ten additional items explaining the scope of the definition. They included things as “a discount or rebate not extended to the public generally”. These examples provide important prospective. They identify things of value that might not otherwise be considered as such. We question the elimination of these examples and urge you to reinstate them.

“Commonwealth business day” This definition requires enhanced clarity. Does this definition mean that if an agency is open on a particular day that it's official business hours span the entire 24-hour period of that day?

“Gift” We agree it is important to specify that a gift is NOT part of “direct communications” or “indirect communications”.

“Legislation” We support the addition of the clarifying language “proposed by any state official or employee”. This captures attempts to influence the other less visible influential powers scattered throughout government, and reinforces the intent of the legislature.

“Lobbying” Regarding the list of exemptions – it may be more appropriate to transfer these exemptions to chapter 57 (as a special category) rather than include them in the definitions section – especially exemptions “b”, “e”, and “g”.

Exemption “b” regarding “only monitoring....”. It must be made clear there is an emphasis on the word *only*. It may be useful to add a phrase such as “and in which the person in no way engages in other efforts to influence legislative action or administrative action.”

Exemption “e” regarding “preparing comments on regulations”. To keep this parallel with the exemption for testimony before committees of the General Assembly, you may want to add a phrase after the word “regulations” such as “when presented in a public forum in conformance with the open meetings law (citation) before a state agency.” Otherwise this action is a covered lobbying activity that would have the \$2,500 disclosure threshold applied to it.

Exemption “g” regarding transporting groups and individuals for lobbying purposes, clearly is more appropriately placed in the exemptions section.

“Lobbying” Common Cause/PA supports the added language specifying that merely being a member of an association is not a lobbying action.

“Lobbyist” Regarding Footnote #64. Under the scenario presented, an attorney who is an association board member and association employee joins an association meeting with a legislator. The concern is whether he is a lobbyist. The answer as it pertains to registration depends on whether he otherwise trips the 20 hour exemption. But in any case, if he is being compensated by the association to participate in the meeting the costs clearly must be part of the association’s compiled expenses for quarterly disclosure purposes.

“Personnel expenses” Regarding Footnote #73. As noted above (in related comments regarding exemption “b” under the definition of “Lobbying”) activities of a registrant’s staff engaged in research and monitoring may not rise to the level that requires them to register as lobbyists, but the expenses the registrant incurs for their monitoring and research activities clearly are reportable expenses for the registrant as indicated under (ii) of this definition.

“Principal” Common Cause/PA supports the addition of the phrase “including a local or state government entity”. This is in keeping with provisions of the law requiring lobbyists to submit financial disclosure reports if they are paid to represent such entities. While the state and government agencies are exempt from registering and reporting under the law, they are still functioning as principals whose contractors are required to register and report.

Registration

Subsections (c) of 53.2, 53.3, and 53.4 – We question the option of not requiring a principal to provide a street address.

53.3(b)(2) While it is not specified under the act as printed, it is appropriate and important to require lobbying firms to disclose the identities of affiliated PACs. Based on the negotiating sessions in which Common Cause/PA participated, it is our belief that it was the legislature's intent to have disclosures by lobbying firms be the equivalent of those of principals.

Reporting

55.1 (g)(1) -- The addition of the term "lobbying firm" here is appropriate and important. When the term "lobbying firm" was added to the bill as it progressed through the general assembly, it was clear that this was an intended outcome.

55.1 (g)(2) -- Issue Identification. The check-off form for "general subject matter or issue being lobbied" is far too general and provides very little useful information to the public. Common Cause/PA believes the language in the statute intends the information disclosed by principals to be informative -- to help the public understand what really is going on. In our opinion, the committee clearly has the authority to require principals to provide information that actually enlightens the public. Common Cause/PA suggests that when a principal checks off one of the boxes it be required to provide a general explanation of its involvement in the issue. For instance, when Common Cause/PA checks the box next to "Campaign Financing", we then should be required to include a statement such as "Advocating contribution limits for all political candidates in Pennsylvania." When we check off "Media", then we should be required to include a statement such as "Advocating a repeal of the ban on county and municipal government from creating community WiFi systems."

55.1 (g)(6) -- If this section means to exempt reporting the name of a state official or employee who received a gift, hospitality, transportation or lodging from a lobbyist when the value does not exceed \$10 then this is acceptable, but not really necessary. However, if this means that a principal does not need to track, record and report gifts, hospitality, transportation, and lodging with individual values under \$10 as part of the comprehensive reporting of such, then that exempting clause clearly violates the letter and the spirit of the act. The act intends for *ALL* such benefits to be recorded and reported.

55.1 (k)(2) -- This method of calculating the value of a gift ticket is incorrect. The value reported should be the actual market value, or in other words the face value of the ticket that every other participant is expected to pay.

55.1 (m) Common Cause/PA believes a third component is required for purposes of clarity and to eliminate unnecessary redundant work for the principal, lobbyist, and the department. Common Cause/PA suggests the following common sense language:

(3) When the person signing the principal's quarterly expense report, attesting to the accuracy of the report, is an official or employee of the principal who also serves as one of the principal's registered lobbyists as indicated on the report form, that signatory shall not be required to sign a second time as one of the principal's lobbyists attesting to the accuracy of the report.

Exemption from Registration and Reporting

57.2 (a)(1)-- As noted earlier, to keep this exemption regarding comments on regulations parallel to those for testimony before legislative committees, it must be limited to those situations in which the comments are presented to an agency at a properly sunshined public meeting. Otherwise, the activity should be considered a covered activity addressed by other exemptions, such as the \$2,500 threshold on lobbying activity.

Commission Referrals, Investigative Proceedings and Noninvestigative Proceedings

63.1(c), and 63.2 (a) and (b) – These regulations misinterpret the statute and the PA Supreme Court's Rules for Professional conduct. The Supreme Court's amendment to the Rules of Professional Responsibility, in 2003, specifically authorizes application of any new lobbyist disclosure law to lawyer-lobbyists with regard to disclosure and confidentiality. The role of the Board clearly is *in addition to*, *NOT in substitution of* the role of the Commission. Basically, the Attorney Discipline Board and the Ethics Commission have concurrent authority under section 1307(d)(8) of the statute.

We thank you for this opportunity to present our concerns, views and suggestions regarding the draft regulations for lobbyist disclosure and regulation. Time will tell how these regulations will perform in practice. We hope to have future opportunities to comment on how to make these regulations fully serve the public's interests in oversight of lobbying in Pennsylvania.